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5 **BEFORE THE**  
6 **CALIFORNIA BOARD OF ACCOUNTANCY**  
7 **DEPARTMENT OF CONSUMER AFFAIRS**  
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. AC-2009-35

10 **SUSAN RACHELE**  
11 **222 Jacaranda Place**  
12 **Fullerton, CA 92832**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

13 **Certified Public Accountant Certificate No.**  
14 **94340**

Respondent.

15 **FINDINGS OF FACT**

16 1. On October 15, 2009, Complainant Patti Bowers, in her official capacity as the  
17 Executive Officer of the California Board of Accountancy (Board), Department of Consumer  
18 Affairs, filed Accusation No. AC-2009-35 against Respondent Susan Rachele before the Board.

19 2. On March 1, 2006, the Board issued Certified Public Accountant Certificate No.  
20 94340 to Respondent. The Certified Public Accountant Certificate will expire on November 30,  
21 2009, unless renewed.

22 3. On or about October 23, 2009, Juana Mejia, an employee of the Department of  
23 Justice, served by Certified and First Class Mail a copy of the Accusation No. AC-2009-35,  
24 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code  
25 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which  
26 was and is: 222 Jacaranda Place, Fullerton, CA 92832. A copy of the Accusation is attached as  
27 exhibit A.

28 4. Service of the Accusation was effective as a matter of law under the provisions of  
Government Code section 11505, subdivision (c).

5. Business and Professions Code (Code) section 118 states, in pertinent part:

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.

6. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. AC-2009-35.

8. Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. AC-2009-35 are true.

10. The total cost for investigation and enforcement in connection with the Accusation are \$3,865.63 as of November 10, 2009.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Susan Rachele has subjected her Certified Public Accountant Certificate No. 94340 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation:

a. Violation of Code sections 490 and 5100(a), in that on March 26, 2009, in a criminal proceeding entitled *People of the State of California v. Susan Rachele*, California Superior Court, County of Orange, North Justice Center, Case Number 09NF0729, Respondent was convicted by her plea of guilty of 107 counts of violating Penal Code section 470(a) (forgery), felonies substantially related to the qualifications, functions and duties of a certified public accountant.

b. Violation of Code section 5063(a)(1)(A-C), in that Respondent failed to report her March 26, 2009 conviction to the Board within thirty days after it was entered.

c. Violation of Code section 5100, in that between 2001 and 2007, Respondent violated Code section 5100(i), by acting with fiscal dishonesty and breaching her fiduciary duties to her employer, and Code section 5100(k), by engaging in embezzlement, theft, misappropriation of funds or property, and obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. 94340, heretofore issued to Respondent Susan Rachele, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 29, 2010.

It is so ORDERED January 29, 2010

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A: Accusation No. AC-2009-35

Exhibit A  
Accusation No. AC-2009-35

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN, State Bar No. 103312  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2617  
Facsimile: (619) 645-2581  
8 E-mail: Michael.German@doj.ca.gov

9 Attorneys for Complainant

10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2009-35

13 **SUSAN RACHELE**  
14 222 Jacaranda Pl  
Fullerton, CA 92832

**A C C U S A T I O N**

15 CPA Certificate No. 94340

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity  
20 as Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On March 1, 2006, the Board issued certificate number 94340 (Certified Public  
22 Accountant) to Respondent Susan Rachele. The certificate was in full force and effect at all  
23 times relevant to the charges brought herein and will expire on November 30, 2009, unless  
24 renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board and Department under the authority  
27 of the following laws. All section references are to the Business and Professions Code unless  
28 otherwise indicated.

1           4.       Section 475 states, in pertinent part:

2                   (a) Notwithstanding any other provisions of this code, the provisions of this  
3                   division shall govern the denial of licenses on the grounds of:

4                   .....

5                   (2) Conviction of a crime.

6                   (3) Commission of any act involving dishonesty, fraud or deceit with the  
7                   intent to substantially benefit himself or another, or substantially injure another.

8                   (4) Commission of any act which, if done by a licentiate of the business or  
9                   profession in question, would be grounds for suspension or revocation of license.

10                  .....

11           5.       Section 482 of the Code states:

12                   Each board under the provisions of this code shall develop criteria to  
13                   evaluate the rehabilitation of a person when:

14                   (a) Considering the denial of a license by the board under Section 480; or

15                   (b) Considering suspension or revocation of a license under Section 490.

16                   Each board shall take into account all competent evidence of rehabilitation  
17                   furnished by the applicant or licensee.

18           6.       Section 490 of the Code states:

19                   A board may suspend or revoke a license on the ground that the licensee has  
20                   been convicted of a crime, if the crime is substantially related to the qualifications,  
21                   functions, or duties of the business or profession for which the license was issued.  
22                   A conviction within the meaning of this section means a plea or verdict of guilty or  
23                   a conviction following a plea of nolo contendere. Any action which a board is  
24                   permitted to take following the establishment of a conviction may be taken when  
25                   the time for appeal has elapsed, or the judgment of conviction has been affirmed on  
26                   appeal, or when an order granting probation is made suspending the imposition of  
27                   sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
28                   of the Penal Code.

29           7.       Section 493 of the Code states:

30                   Notwithstanding any other provision of law, in a proceeding conducted by  
31                   a board within the department pursuant to law to deny an application for a license  
32                   or to suspend or revoke a license or otherwise take disciplinary action against a  
33                   person who holds a license, upon the ground that the applicant or the licensee has  
34                   been convicted of a crime substantially related to the qualifications, functions, and  
35                   duties of the licensee in question, the record of conviction of the crime shall be  
36                   conclusive evidence of the fact that the conviction occurred, but only of that fact,  
37                   and the board may inquire into the circumstances surrounding the commission of  
38                   the crime in order to fix the degree of discipline or to determine if the conviction

1 is substantially related to the qualifications, functions, and duties of the licensee in  
2 question.

3 As used in this section, "license" includes "certificate," "permit,"  
4 "authority," and "registration."

5 8. Section 5063 of the Code states, in part pertinent:

6 (a) A licensee shall report to the board in writing of the occurrence of any  
7 of the following events occurring on or after January 1, 1997, within 30 days of the  
8 date the licensee has knowledge of these events:

9 (1) The conviction of the licensee of any of the following:

10 (A) A felony.

11 (B) Any crime related to the qualifications, functions, or duties of a public  
12 accountant or certified public accountant, or to acts or activities in the course and  
13 scope of the practice of public accountancy.

14 (C) Any crime involving theft, embezzlement, misappropriation of funds  
15 or property, breach of a fiduciary responsibility, or the preparation, publication, or  
16 dissemination of false, fraudulent, or materially misleading financial statements,  
17 reports, or information.

18 As used in this section, a conviction includes the initial plea, verdict, or  
19 finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court  
20 even though that conviction may not be final or sentence actually imposed until  
21 appeals are exhausted.

22 . . . .

23 (d) The report required by subdivisions (a), (b), and (c) shall be signed by  
24 the licensee and set forth the facts which constitute the reportable event. If the  
25 reportable event involves the action of an administrative agency or court, then the  
26 report shall set forth the title of the matter, court or agency name, docket number,  
27 and dates of occurrence of the reportable event.

28 . . . .

9. Section 5100 of the Code states, in part pertinent:

After notice and hearing the board may revoke, suspend, or refuse to renew  
any permit or certificate granted under Article 4 (commencing with Section 5070)  
and Article 5 (commencing with Section 5080), or may censure the holder of that  
permit or certificate for unprofessional conduct that includes, but is not limited to,  
one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications,  
functions and duties of a certified public accountant or a public accountant.

. . . .

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

1                   ....  
2                   (k) Embezzlement, theft, misappropriation of funds or property, or obtaining  
3 money, property, or other valuable consideration by fraudulent means or false pretenses.  
4                   ....

5           10.     Section 5106 of the Code states:

6                   A plea or verdict of guilty or a conviction following a plea of nolo  
7 contendere is deemed to be a conviction within the meaning of this article.  
8 The record of the conviction shall be conclusive evidence thereof. The board  
9 may order the certificate or permit suspended or revoked, or may decline to  
10 issue a certificate or permit, when the time for appeal has elapsed, or the  
11 judgment of conviction has been affirmed on appeal or when an order granting  
probation is made, suspending the imposition of sentence, irrespective of a  
subsequent order under the provisions of Section 1203.4 of the Penal Code  
allowing such person to withdraw his plea of guilty and to enter a plea of not  
guilty, or setting aside the verdict of guilty or dismissing the accusation,  
information or indictment.

12           11.     Section 5107 of the Code provides, in pertinent part, that the Board may request  
13 the administrative law judge to direct a licensee found to have committed a violation or  
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
15 and enforcement of the case, including but not limited to attorneys' fees.

16           12.     Title 16 California Code of Regulations (Regulations), section 99 states, in  
17 pertinent part:

18                   For the purposes of denial, suspension, or revocation of a certificate or  
19 permit pursuant to Division 1.5 (commencing with Section 475) of the Business  
20 and Professions Code, a crime or act shall be considered to be substantially  
21 related to the qualifications, functions or duties of a certified public accountant  
22 or public accountant if to a substantial degree it evidences present or potential  
unfitness of a certified public accountant or public accountant to perform the  
functions authorized by his certificate or permit in a manner consistent with the  
public health, safety, or welfare. Such crimes or acts shall include but not be  
limited to those involving the following:

23                   (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

24                   ....

25                   (d) Violation of any of the provisions of Chapter 1, Division III of the  
26 Business and Professions Code or willful violation of any rule or regulation of the  
board.

27           ///

28           ///



13. Section 99.1 of the Regulations states:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

**FIRST CAUSE FOR DISCIPLINE**

**(March 26, 2009 Felony Conviction – 107 Counts of Forgery from 2001 to 2007)**

14. Respondent has subjected her certificate to discipline under Code sections 490 and 5100(a), in that she sustained a criminal conviction that is substantially related to the qualifications, functions and duties of a certified public accountant. On March 26, 2009, in a criminal proceeding entitled *People of the State of California v. Susan Rachele* in the California Superior Court, County of Orange, North Justice Center, Case Number 09NF0729, Respondent was convicted by her plea of guilty of 107 counts of violating Penal Code section 470(a) (forgery), felonies. The circumstances are as follows:

a. From 2001 to 2007, Respondent was the controller for Consolidated Design West (CDW), and was solely responsible for maintaining and reconciling the financial records for CDW. On or about March 28, 2007, an employee of Wells Fargo Bank notified CDW's owner that there was unusual account activity on CDW's bank account: several checks had been written to Respondent, who the employee knew was CDW's controller, for unusually large sums of money. CDW's owner reviewed the checks in question, immediately noticed that

1 the signature on all of the checks was not his, and confronted Respondent, who admitted to  
2 stealing more than \$500,000 from CDW over a six-year period. The checks in question were  
3 made out to either Respondent or to cash and recorded in the ledger as being paid to CDW  
4 vendors and coded to cost of goods sold. Search warrants later confirmed that 107 checks were  
5 deposited into Respondent's bank accounts from May 25, 2001, through March 17, 2007.

6 b. In the Advisement and Waiver of Rights for a Felony Guilty Plea,  
7 Respondent handwrote the following statement as the basis for her plea:

8 On or about and between 5-25-01 and 3-16-07 I willfully, unlawfully and  
9 knowingly without authority and with the intent to defraud signed the name of  
10 [CDW's owner], another person, to 107 checks totaling \$577,665.43. I admit  
11 stole in excess of \$500,000 and engaged in a pattern of related fraudulent felony  
12 conduct pursuant to penal code sections 1203.045(a), 186.11(a)(2), and  
13 12022.6(a)(2) [sic].

14 c. Respondent pled guilty to all 107 forgery charges and the enhancement of  
15 aggravated white collar crime over \$500,000 and was sentenced to 6 years prison, ordered to pay  
16 \$400 in restitution fines, ordered to pay \$2,140 in security fees, and ordered to pay restitution of  
17 \$549,665.43.

## 18 **SECOND CAUSE FOR DISCIPLINE**

### 19 **(Failure to Report Conviction)**

20 15. Respondent is subject to discipline under section Code 5063(a)(1)(A-C) in that  
21 she failed to report her March 26, 2009 conviction, as detailed in paragraph 14, above, to the  
22 Board within thirty days after it was entered by her guilty plea made that same date.

## 23 **THIRD CAUSE FOR DISCIPLINE**

### 24 **(Unprofessional Conduct - Violation of the Code)**

25 16. Respondent has subjected her registration to discipline under Code section 5100  
26 in that between 2001 and 2007, as described in paragraph 14, she failed to comply with the  
27 following sections of the Code. Any one of these failures, or any part thereof, is, in and of itself,  
28 a sufficient basis upon which to impose discipline.

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1 a. Section 5100(i): Respondent acted with fiscal dishonesty and breached  
2 her fiduciary duties to CDW.


3 b. Section 5100(k): Respondent engaged in embezzlement, theft,  
4 misappropriation of funds or property, and obtained money, property, or other valuable  
5 consideration by fraudulent means or false pretenses.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
8 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 9 1. Revoking, suspending or otherwise imposing discipline upon Certified Public  
10 Accountant Certificate Number 94340 issued to Susan Rachele;  
11 2. Awarding the Board costs as provided by statute; and,  
12 3. Taking such other and further action as may be required.

13  
14 DATED: October 15, 2009

  
Patti Bowers, Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant

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